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No. 610

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ANGELUS MILLING COMPANY,
Petitioner

VS.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING

Prew Savoy, on behalf of the Angelus Milling Company, prays that a rehearing be granted in this cause, under Rule 33 of the rules of this Court. The judgment of this Court was entered May 21, 1945.

GROUNDS FOR REHEARING

I.

The nature of the one question answered adversely to Petitioner and not heretofore completely argued—because of the insufficiency of the allowed time for argument—requires a rehearing on that question alone.

Twenty minutes of the time allowed Petitioner for argument were required to be devoted to the question of the jurisdiction of this Court, due to what was said by this Court, in the granting of the Petition for a Writ of Certiorari, in *Commissioner v. Estate of Bedford*, No. 710, October Term, 1944. There was thus left an inadequate amount of time to permit Petitioner to make his argument in chief and also to make a complete reply in respect of all of the questions which seemed of concern to the Court in the course of Respondent's argument. Such time as remained was devoted by Petitioner entirely to the principal questions of law presented, all of which questions have been decided favorably to Petitioner, in the opinion of the majority of the Court. The time allowed Petitioner did not permit a review of the affidavits in support of the position that the Commissioner *in fact* completely examined Petitioner's claim on the merits, and that such an examination, if made, (the claim not having been acted upon during the statutory period for filing claims), in and of itself, constituted a waiver, in law, of any formal defect in the claim and of the Regulations.

The question of the sufficiency of uncontradicted affidavits presented by Petitioner, to establish the fact that the Commissioner examined Petitioner's claim on the merits, was omitted from the argument, in favor of the principal questions involved, for four reasons:

(a) The Circuit Court of Appeals had said: "Since the Tax Court disposed of the petition upon

motion to dismiss, and not after a hearing, the company is entitled to insist that we take in its favor any implications which can be drawn from this evidence; and we shall dispose of the appeal upon that assumption." As Respondent had not taken a contrary position, and in view of the correctness of this basic assumption, it was assumed that this Court would take a like view, if it reached this point, after considering the principal legal questions.

(b) The Tax Court had given Counsel for Respondent an opportunity, at the time of the hearing on the motion to dismiss, *or thereafter*, to file affidavits contradicting the affidavits filed by Petitioner, if upon a further examination, he should find the allegations contained therein to be untrue. Respondent had failed to file any such affidavits, because the facts alleged are true. Petitioner's claim was completely examined on the merits. Indeed, the Commissioner could not have concluded that Petitioner was not the taxpayer, as he did in his letter of rejection (R. 40), without such an examination.

(c) Nowhere in Respondent's Brief had it been urged that the Commissioner did not *in fact* examine Petitioner's claim on the merits. The brief was signed by five officials of the Department of Justice, whose integrity is such that no one of them would make such a representation to this Court, in the presence of the facts, and they did not. They merely relied on the conclusion of the Tax Court that Petitioner had failed to establish a waiver, a question of law as presented by Petitioner, and not of fact,

as Petitioner had not urged that there had been an expressed waiver.

(d) Petitioner believed that there was, and could be, no question that this Court, upon a motion to dismiss for lack of jurisdiction, would assume that the statements contained in the affidavits were true and would interpret them, together with the other evidence, in accordance with their intent.

The failure of this Court to accept the allegations in the affidavits as true, and its failure to understand their context in connection with the other evidence of record, with the result that, after deciding the fundamental legal questions involved in favor of Petitioner, the Court reached a conclusion denying Petitioner the right to a trial on the merits, was the result of the limited time permitted in argument. It is urged by Petitioner that, upon a short rehearing devoted to this question alone, the manifest error in the final conclusion of the opinion could be, and would be, corrected by this Court.

II.

The ultimate result reached by this Court in its opinion—after the principal questions of law argued had been decided—requires a rehearing to make this case stand for the principles involved and seemingly decided. The moral issue involved requires it.

This Court, in this case, has decided:

(a) That it has jurisdiction. *(The Bedford case, supra);*

(b) That the statute involved does not require that the evidence accompany the claim for refund;

(c) That the Commissioner may waive the regulations requiring that the evidence accompany the claim, i.e. may waive a purely formal defect in the claim, upon an examination of the claim on merits; and

(d) That it is not essential to the establishment of such a waiver that the Commissioner communicate his ruling on the merits to the taxpayer.

These were the principle questions of law argued and answered affirmatively, all in favor of Petitioner. The question left unanswered in *United States v. Memphis Cotton Oil Co.*, 288 United States 62, and involved in this case, and still for all practical purposes left unanswered, was and is whether, by a complete examination of a claim on the merits, as here, the Commissioner is *deemed*, as a matter of law, to have waived formal defects in the claim. This Court, in its opinion, virtually says that there may be such a waiver and then reaches the opposite ultimate conclusion in this case.

If it is assumed, and it should be, as it is proved by uncontradicted affidavits (the full portent of which can be made very clear on argument), that the Commissioner examined completely the Petitioner's claim on the merits, justice requires the conclusion that such an examination, continuing beyond the statutory period within which an amendment might be made, in legal effect, constitutes a

waiver of purely formal defects in the claim. A contrary conclusion, which permits Government officials to hold meritorious claims, defective only as to form, until the time to amend has passed; and then to reject the claim for a defect of form, refuse a refund, and prevent any Court hearing on the merits, all with the consent of this Court, will in the end produce only the greatest distrust of both the Executive and Judicial branches of our Government, as the comments on the opinion herein show.

The Circuit Court of Appeals said: "It makes no difference to the taxpayer what was his mistake; in either case he awakes to learn that it is never safe to put his trust in officials. . . . The result is often extremely harsh, as this case shows; but he who deals with the government must dot his i's and cross his t's; and if he assumes that he may rely upon the ordinary rules which apply as between individuals, he is doomed to disappointment."

After the decision of this Court, on May 28, 1945, there appeared the following, on page 1, column 1, of "What's Happening in Taxation and Government Regulation," a Prentice-Hall, Inc., weekly publication:

"LET THE TAXPAYER BEWARE!

"'It is never safe to place (one's) trust in officials.' Such is the advice of the Second Circuit Court of Appeals, now confirmed by the Supreme Court (Angelus Milling 5/21/45)."

Such a reaction has been general. It is, indeed, if true, a commentary on the integrity of our Gov-

ernment—in its relations with its citizens—to be sadly and seriously considered.

Such a conclusion is inevitable, unless this Court hears and reconsiders the one question left unargued in this case, namely, that the uncontradicted affidavits establish that there was a full examination of Petitioner's claim on the merits, and that such an examination, in legal effect, constitutes a waiver of the formal defects of the claim, and correctly determines that, under such circumstances, Petitioner is entitled to have a trial on the merits.

The conclusion required by the facts of this case was well expressed, in *Howbert v. Penrose,* 38 F. (2d) 577, where the United States Circuit Court of Appeals for the Tenth Circuit said, at page 581: "The defendant (the Government) concedes that he (the taxpayer) is entitled to it on the merits; and while 'men must turn square corners when they deal with the Government' (*Rock Island, etc. R. Co. v. United States,* 254 United States 141, 41 S. Ct. 55, 56, 65 L. Ed. 188), the Government ought to turn square corners when dealing with its citizens."

It is respectfully urged that this Court should, in this case, likewise apply the converse of the *Rock Island* rule, which has been cited and relied upon for more than 20 years, and not the conclusion reached by the Court below in this case. The only difference between the two cases is that, in this case, the Commissioner did not concede the merits, but this Court said in its opinion that this is not necessary.

Is it going too far to urge that this Court—after 149 years of decisions adjudicating disputes

between the Government and taxpayers—should now, if only on the grounds of fairness in relations between the Government and taxpayers—adopt the rule in the *Howbert* case?

If this rule of *Howbert v. Penrose, supra,* is applied, this Court must conclude that the examination of this claim on the merits, at which time the Commissioner obtained all of the data lacking on the face of the claim, required by the Regulations to accompany the claim, constituted, in legal effect, a waiver of the Regulations—a waiver of the formal defects in the claim. Only then will it have correctly answered the question left unanswered in *United States v. Memphis Cotton Oil Co., supra.*

This Petitioner is not asking this Court to review a fact question, tried by the Tax Court, or to make a refund, but is seeking only a review of a legal question and to be heard on the merits. This Court has before it all that the Tax Court had presented to it,—namely affidavits. The Tax Court was under the misapprehension that there could be no waiver of the Regulations, as a matter of law. Also, it failed to accept the facts in the affidavits as true. Since its major premise was wrong under the decision of this Court, and since it failed to accept the affidavits as true, its views are entitled to no weight. It is not a situation in which the case of *Dobson v. Commissioner,* 320 United States 489, applies. Again, let it be noted that the single judge who heard the argument,[1] unreviewed by the entire Tax

[1] See Griswold, The Need for a Court of Tax Appeals, Harvard Law Review, Volume LVII, No. 8, p. 1170, et seq., *re* one man Tax Court decisions.

Court, or by the Presiding Judge, since it was he who heard the case (R. 91), failed to accept as true the statements contained in the uncontradicted affidavits. Had he done so, and had he applied this Court's holdings on the other questions of law involved respecting waivers, he would have had to hold, as a matter of law, that Petitioner has the right to be heard on the merits.

Whether or not, on the basis of the uncontroverted facts, the Commissioner is to be deemed to have waived the formal defects of the claim is a question of law—not one of fact—finally to be determined by this Court, and not within the province of the Tax Court for final determination. *Trust u/w Bingham v. Commissioner*, No. 932, October Term, 1944.

If this Court fails to grant a rehearing and does as did the Tax Court, then it means that, on a motion to dismiss for lack of jurisdiction, affidavits are worthless and witnesses must be called, another most unfair result, contrary to usual practise.

If taxpayers cannot place their trust in Government officials and can no longer rely on uncontradicted affidavits to establish facts known by the Government to be true, in support of a motion to dismiss, the citizen and taxpayer indeed has cause for concern.

The moral issue involved in this Court's final conclusion goes much deeper than a mere decision in this case, important to the Petitioner alone. Every phase of our lives is being controlled by the Government because of war. It has been much controlled, and after the war may be more controlled,

in the name of social justice, all by Government officials. Is there to be no fairness in *all* these relations, too? Are the regulations governing them to constitute the rules of a card game, with all of the taxpayer's cards required to be face up, under the *Rock Island* rule, while the Government's cards are all face down?

Is a small taxpayer, in the presence of "complicated revenue measures" and voluminous and complicated Treasury Regulations, to be denied a hearing on a technicality, obviously overcome in connection with a hearing on the merits, and which can admittedly be expressly waived and is expressly waived whenever the Government official involved in his discretion is willing to do so? "Even tax administration does not as a matter of principle preclude considerations of fairness."

The substance of the conclusion, in the opinion, with respect to which no argument was heard is (1) that "the showing should be unmistakable that the Commissioner has in fact seen fit to dispense with his formal requirements and to examine the merits of the claim" and (2) that Petitioner failed to discharge the burden of so showing.

The showing is unmistakable that, the Commissioner examined Petitioner's claim on the merits, if the statements in the affidavits are assumed to be true, and the Government has never denied this to be a fact. The Commissioner could have rejected the claim without a consideration of its merits. He did not do so—but he used the formally defective claim as one of the two bases for rejection, *after* the examination. Does that not, in all fairness, con-

stitute an *unmistakable* waiver, if any effect is to be given to this Court's words herein on the subject of waiver?

The information respecting this claim did not reach the Commissioner in a roundabout way, nor were the facts just found under his roof. The Commissioner had his attention focused on the merits of this claim. The uncontradicted evidence is clear on the subject.

Joint returns of Petitioner and Niagara had been filed. (R. 110-111, 113-124.) Their joint claims and separate claims for refund had been filed (R. 11-39). Petitioner had allocated the tax paid by both, in its "Amendment to Claim." (R. 32-33.) The returns, claims and data were kept together, virtually as one file, in the custody of the same person. (Representations of Counsel who so found them, when trying to obtain Petitioner's returns. Counsel was not sworn, but so represented, without contradiction.) Both claims were examined on the merits by the same person, Lieben, (R. 125-129), who determined that Niagara was the taxpayer, and not Petitioner, (R. 40) a question to be determined on the merits, only after an examination of the merits.

The question then is to be resolved by the sufficiency of the affidavits. Otherwise, the principles recognized and adopted by the Court in its opinion, comprise but words.

A taxpayer may not call a revenue agent as a witness to establish any fact. (Rule IX, Rules of the Treasury Department, forbids his testifying.) On a motion to dismiss, must other witnesses be

called? The Circuit Court of Appeals thought not. Petitioner thought not. It has never been previously suggested.

What more was Petitioner required to do than present affidavits on facts known by Respondent to be true, and not contradicted, although every opportunity to contradict was given Respondent, in order to make the quoted words of this Court mean that there can be, in law, a waiver of formal defects in a claim, and of the Regulations, by an examination on the merits? Surely, the Commissioner is not required to say "I hereby waive the regulations," and this Court has so noted in its opinion herein.

The Regulations are designed both for the benefit of the administrating officials *and as a guide to the taxpayer*. "They are devised, not as traps for the unwary." *Tucker v. Alexander*, 275 United States 288, 231. If a claim does not meet their requirements, the Commissioner has the power promptly to reject the claim. If he holds the claim, chooses to examine its merits and does so, he should be *deemed* to have waived the formal requirements contained in the Regulations. Is there anything unfair about such a holding, insofar as the Government is concerned? Is not a contrary holding unnecessarily unfair to the taxpayer-claimant, who is forced by the Government, at its will or whim, to go through a period of years dealing with the merits of the claim, only to have it rejected for formal defects which are bound to be, and here were, cured upon such examination?

The sufficiency of the affidavits—the question of fairness involved—the question which was not ar-

gued—all are matters with respect to which Petitioner should be heard.

If ever the rights of individual citizens cried out for consideration, it is now. If the principle announced by the Circuit Court of Appeals and seemingly confirmed by this Court is to be, then the principle—to whom does the money belong, *ex aequo et bono*, means nothing, except when it is to be applied in the interests of Government, *United States v. Jefferson Electric Mfg. Co.*, 291 United States 386; the principles of fairness which prompted the declaration of our independence are to be henceforth forgotten; and the two World Wars fought to maintain principles of decency and morality were in vain.

In reaching its ultimate conclusion, this Court *must* have failed to note the implications which *must* follow, by reason of its failure (1) to assume the statements in the affidavits to be true, (2) to apply them with full effect, under the principles it had announced in its opinion, and (3) to conclude that the technical requirements of the Regulations and formal defects of the claim were in effect waived, so that Petitioner may be heard by the Tax Court on the merits.

A contrary conclusion is too serious a condemnation of this Court to contemplate. Counsel cannot subscribe to the quotation from Prentice-Hall, *supra*, in the absence of a full consideration of the question by this Court, upon a rehearing.

There is a vast difference between the Court reaching a wrong conclusion, rendering a wrong decision, of concern only to the parties, and the Court render-

ing a decision which the public believes lacks fairness and morality, because it adopts the principle that a citizen may not trust his Government. Furthermore, the converse—distrust—if this decision remains—is not to be limited to the Executive branch of the Government—since it will have received the stamp of approval of our highest Court. A moral question as important as is this one, remaining unanswered, is a serious menace to the fabric of our Nation.

Truly, the moral issue involved in the final conclusion of the opinion in this case requires a rehearing.

Respectfully submitted

PREW SAVOY,
Counsel for Petitioner.

Prew Savoy, Counsel for Petitioner, hereby certifies that the foregoing Petition for Rehearing is presented in good faith and not for delay.

PREW SAVOY.

June, 1943.

SUPREME COURT OF THE UNITED STATES.

No. 610.—October Term, 1944.

Angelus Milling Company, Petitioner, *vs.* Commissioner of Internal Revenue.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 21, 1945.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This is a suit under Title VII of the Revenue Act of 1936, 49 Stat. 1648, 1747, 7 U. S. C. § 644 *et seq.*, for a refund of processing taxes paid under the Agricultural Adjustment Act of 1933. The problem of the case derives from the procedural requirements of a claim for such a refund.

The petitioner, Angelus Milling Company, known until June, 1933 as the Middleport Flour Mills, Inc., was a processor of wheat, with its principal office in Niagara Falls, New York. During the years for which the refund is claimed—1933 to 1936—its processing operations were closely connected with those of the Niagara Falls Milling Company. The two companies had the same officers, employees, and majority stockholder, and a joint bank account. They also had a common set of books, but the respective transactions of the two companies—purchases, costs of manufacture, sales—were entered in their separate accounts on the books. Between July 9, 1933, and January 31, 1935, the companies filed joint processing tax returns. Between February 1, 1935, and November 30, 1935, Niagara filed returns in its name on behalf of itself and petitioner.

After *United States* v. *Butler*, 297 U. S. 1, invalidated the processing tax, three claims were filed with the Commissioner on June 22, 1936, all stating the name of the taxpayer and claimant as "Niagara Falls Milling Co., Inc. and/or Middleport Flour Mills, Inc." Each of these claims is for only part of the period during which the tax was paid, and their total is $434,045.27. Admittedly the form of these claims did not satisfy the require-

ments of the statute[1] or the authorized Treasury Regulations.[2] They were filed on an old Form 843 and not on the required Form P. T. 79. While these claims were still undetermined, Niagara, on June 30, 1937, filed a claim in the sum of $436,231.73. This claim was in due form but was filed by Niagara on its own behalf alone. Thereafter, on August 15, 1938, petitioner filed a claim, designated "Amendment to Claim", for itself alone for the refund of $145,839.12. While this claim was submitted on Form P. T. 79, it failed to give the information required by the form and the regulations, containing merely an apportionment between Angelus and Niagara of the three earlier claims. An attached affidavit stated that this claim "was originally filed on the 22nd day of June 1936 in the name of the Niagara Falls Milling Company and/or Middleport Flour Mills, Inc." The Commissioner, on May 23, 1941, denied this claim.

To review this disallowance, petitioner brought proceedings in the United States Processing Tax Board of Review. A motion to dismiss, because of a fatal defect in the claim, was denied by the Board, but the Commissioner in his answer stood on his ground that the Board was without jurisdiction to entertain the proceedings. At this stage in the litigation Congress abolished the Processing Tax Board of Review and transferred its jurisdiction to the present Tax Court. That Court granted the Commissioner's renewed motion to dismiss, 1 T. C. 1031, and the Circuit Court of Appeals for the Second Circuit affirmed. 144 F. 2d 469. We brought the case here, — U. S. —, because conflict was urged with the decision in *U. S.* v. *Memphis Cotton Oil Co.*, 288 U. S. 62.[3]

Petitioner's claim for recovering processing taxes paid by it was properly rejected by the Commissioner if it did not satisfy

[1] Section 903 of Title VII of the 1936 Revenue Act, 49 Stat. 1648, 1747, requires that no refund be made or allowed "unless . . . a claim for refund has been filed . . . in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. All evidence relied upon in support of such claim shall be clearly set forth under oath."

[2] The applicable regulations provide for the making of claims on prescribed forms, presentation of the grounds urged, and submission of evidence, etc. Treas. Reg. 96, Arts. 201, 202, 601, 603, 605, 606. The only information furnished in these claims is the name and address of the joint claimants, and a statement of the dates and amounts of the tax payments made by the Niagara Milling Company.

[3] After we granted certiorari in this case, the same question of timeliness as to filing of the petition emerged as is raised in Commissioner v. Estate of Bedford, No. 710, decided this day. The decision in the *Bedford* case governs this.

the conditions which Congress directly and through the rule-making power given to the Treasury laid down as a prerequisite for such refund. Insofar as Congress has made explicit statutory requirements, they must be observed and are beyond the dispensing power of Treasury officials. *Tucker* v. *Alexander*, 275 U. S. 228, 231-232; *U. S.* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 71; *U. S.* v. *Garbutt Oil Co.*, 302 U. S. 528, 533. Without needless elaboration, we conclude that there is nothing in what Congress has explicitly commanded to bar the claim. The effective administration of these modern complicated revenue measures inescapably leads Congress to authorize detailed administrative regulations by the Commissioner of Internal Revenue. He may insist upon full compliance with his regulations. See *U. S.* v. *Memphis Cotton Oil Co.*, *supra* at 71; *Commissioner* v. *Dunn-Wells Co.*, 321 U. S. 219, 223-224. It is hardly contended that the confusing series of petitioner's claims which we have summarized, whether singly or in conjunction, obeyed the regulations. For such default the Commissioner could have rejected the claims out of hand. He did not do that, and by what he did do he has given rise to the contention that he waived the requirement of his regulations. The basis of this claim of waiver is that the Commissioner through his agents dispensed with the formal requirements of a claim by investigating its merits.

Candor does not permit one to say that the power of the Commissioner to waive defects in claims for refund is a subject made crystal-clear by the authorities. The question has been somewhat complicated by cases involving amendments of claim. Thus, in *U. S.* v. *Memphis Cotton Oil Co.*, *supra*, a claimant's amendment was allowed because filed before his original claim was rejected on formal grounds. According to what was there said there can be no amendment after a rejection though the Commissioner had examined the claimant's books and tentatively found an overpayment. See *Edwards* v. *Malley*, 109 F. 2d 640; 10 Mertens, Law of Federal Income Taxation (1942) § 58.19. It smacks too much of the strangling niceties of common law pleading to find no existing claim to which a curative amendment may be attached, although there has been an examination of the merits, simply because of the prior rejection of a formally defective claim and yet find waiver of a formal defect merely because an examination of the merits by the Commissioner manifests consideration of the claim.

Treasury Regulations are calculated to avoid dilatory, careless, and wasteful fiscal administration by barring incomplete or confusing claims. *Tucker* v. *Alexander*, *supra* at 231; *Commissioner* v. *Lane-Wells Co.*, *supra* at 223-224. But Congress has given the Treasury this rule-making power for self-protection and not for self-imprisonment. If the Commissioner chooses not to stand on his own formal or detailed requirements, it would be making an empty abstraction, and not a practical safeguard, of a regulation to allow the Commissioner to invoke technical objections after he has investigated the merits of a claim and taken action upon it. Even tax administration does not as a matter of principle preclude considerations of fairness.

Since, however, the tight net which the Treasury Regulations fashion is for the protection of the revenue, courts should not unduly help disobedient refund claimants to slip through it. The showing should be unmistakable that the Commissioner has in fact seen fit to dispense with his formal requirements and to examine the merits of the claim. It is not enough that in some roundabout way the facts supporting the claim may have reached him. The Commissioner's attention should have been focused on the merits of the particular dispute. The evidence should be clear that the Commissioner understood the specific claim that was made even though there was a departure from form in its submission. We do not think that the petitioner has made out such a case here.

The evidence of waiver largely rests upon a letter from a General Deputy Collector requesting an examination of certain books, and upon affidavits of two accountants, one an officer of the company, to the effect that the Commissioner examined petitioner's books in order to consider the claim. We agree with the Tax Court that the evidence is insufficient to establish waiver. The letter from the General Deputy Collector requesting petitioner's president to allow examination of the "records of the Middleport Flour Mills, Inc., and Angelus Flour Mills, Inc." was in connection with the claim which had been filed by the Niagara Milling Company. In view of the confusing identity of interest of the two companies, it is not unreasonable to attribute this inquiry, as did the Tax Court, to Niagara's claim and not to petitioner's. For similar reasons, the affidavits regarding the purpose of the Commissioner's representatives bear interpretation of a like significance.

In the *Memphis Cotton Oil* case, where an amendment was allowed out of time, the Deputy Commissioner, after an audit of the taxpayer's books, notified the taxpayer in writing that its refund claims had been considered and that its taxes had been readjusted in accordance with a proven overassessment. Similar evidence of preoccupation by the Commissioner with the particular claim and controversy has been offered in cases where waiver was recognized. See, *e. g., United States* v. *Elgin Nat. Watch Co.*, 66 F. 2d 344; *United States* v. *Humble Oil & Refining Co.*, 69 F. 2d 214; *Weihman* v. *United States*, 4 F. Supp. 155. To be sure, it is not essential for the establishment of a waiver that the Commissioner communicate his ruling on the merits to the taxpayer. But in the absence of such explicitness the implication that formal requirements were dispensed with should not be tenuously argumentative. No more than that can be squeezed out of the materials in this record. Thus it is claimed that the Commissioner offered a refund, subject to offsets, to the Niagara Falls Milling Company. But this rather confirms the indication the Commissioner was bent on Niagara's claim. The Commissioner may have acquired knowledge of petitioner's affairs but only by the way, incidentally to his investigation of Niagara's claims. Petitioner has failed to sustain his burden of showing that the Commissioner, by examining the facts of petitioner's claim in order to determine the merits, dispensed with the exactions of the regulations.

An additional argument of the petitioner need not detain us long. It urges that taking the claims filed by Niagara and petitioner together, they furnish all the data required by the regulations. But it is not enough that somewhere under the Commissioner's roof is the information which might enable him to pass on a claim for refund. The protection of the revenue authorizes the Commissioner to demand information in a particular form, and he is entitled to insist that the form be observed so as to advise him expeditiously and accurately of the true nature of the claim.

Affirmed.

Mr. Justice DOUGLAS dissents.